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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,389	04/15/2004	Kim R. Smith	163.1804US01	8462
43896	7590	02/06/2007		
ECOLAB INC. MAIL STOP ESC-F7, 655 LONE OAK DRIVE EAGAN, MN 55121			EXAMINER OGDEN JR, NECHOLUS	
			ART UNIT	PAPER NUMBER
			1751	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/06/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/825,389

Applicant(s)

SMITH, KIM R.

Examiner

Necholus Ogden

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Response to Amendment

1. Claim 1 rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over EP (075,665) is withdrawn in view of applicant's amendment.
2. Claims 1-10 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims of copending Application No. 10/852,591 is maintained because 10/852,591 continues to disclose claims directed to a dispenser, surfactant; water and solvent (see claims 1, 15 and 16) and the claims of the instant application continue to overlaps the broad claim language.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The aforementioned claim states the terms "non-aerosol" which are not supported by the specification. Applicant appears to have support for non-propellant (page 4), the specification does not provide adequate support for non-aerosol. Appropriate corrections are required.

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5. Claims 1 and 3-9 rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over McCue et al (5,403,587) is maintained.

McCue et al disclose a disinfectant and sanitizing composition comprising 0.02 to 5.0% essential oils, 0.02 to 5.0% organic solvent, 0.75 to 10% surfactant and balance water (col. 3, lines 1-29). McCue et al further teach that said surfactants include sodium salt of coco-fatty acid soaps (Norfox Coco powder) see col. 4, lines 33-35.

Furthermore, said compositions include other optional ingredients such as solubilizers, fragrances and antimicrobial agents (col. 4, lines 52-61). With respect to the dispensing systems, McCue et al teach that said ready to use dispensing systems include liquid forms of pump spray bottles, squeeze bottles or pump spray bottles to produce a pump mechanism (col. 5, lines 44-54).

As this reference teaches all of the instantly required it is considered anticipatory.

In the alternative, McCue et al is silent with respect to the solids contents and the alkali content, however one of ordinary skill in the art at the time the invention was made could reasonably assume that the specific soap product, Norfox Coco Powder, would inherently meet those limitations because applicant's suggest, the his specification, that said soap product is a preferred ingredient (applicant's specification page 5, line 23). Accordingly, the claims are suggested by the teachings of McCue et al.

Response to Arguments

Applicant argues that McCue et al teach aerosol and propellant devices and further includes additional ingredients excluded by the "consisting of" transitional language.

The examiner contends and respectfully disagrees because McCue et al continues to teach that said compositions are dispensed through trigger, pump and squeeze mechanisms (col. 5, lines 45-50 and column 5, lines 20-36). With respect to the "consisting of" phrase after liquid soap, the examiner contends that the phrase does little to exclude additional ingredients because it does not close the entire product for additional ingredients only the liquid soap portion. Therefore, any additional ingredients are permissible as long as they are not categorized as being a "liquid soap".

If applicant intended to close the entire product an amendment to line 1 after "product", deleting "comprising" and inserting "consisting of" will close the claim to any additional ingredient not specified.

6. Claims 1, 3-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsuda (4,312,771) in view of McCue et al (5,403,587).

7. Matsuda disclose a liquid soap composition comprising soaps such as potassium oleate soap, potassium coconut fatty acid soap, and beef-tallow fatty acid potassium soap; assistants; wetting agents; other components (see Table 1 Recipe Numbers 1-14). Matsuda further teach that said soap composition is contained in a dispenser and used for hand washing, however it is silent with respect to the specific dispenser being non-propellant.

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8. McCue et al is relied upon as set forth above. Specifically McCue et al teach that said liquid soaps are dispensed through trigger, pump and squeeze mechanisms (col. 5, lines 45-50 and column 5, lines 20-36).

9. It would have been obvious to the skilled artisan to include a non-propellant dispenser to the compositions of Matsuda because said dispenser are well known in the art and in view of the teachings of McCue et al.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Necholas Ogden whose telephone number is 571-272-1322. The examiner can normally be reached on M-T, Th-Fri.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on 571-272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Necholas Ogden
Primary Examiner
Art Unit 1751

No
2-2-07